NO. 15,001

In the United States Court of Appeals for the Ninth Circuit

OGUE MADRONA BANEZ, Appellant,

vs.

OHN P. BOYD, District Director f Immigration and Naturalization ervice, United States Department f Justice, and Roy J. Norene, Appellees

On Appeal from the United States District Court for the District of Oregon

BRIEF OF APPELLEE ROY J. NORENE

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On Appeal from the United States District Court for the District of Oregon

BRIEF OF APPELLEE ROY J. NORENE

OPINION BELOW

The District Court's opinion (R.21-23). There were no findings of fact or conclusions of law made or entered by the Court below.

JURISDICTIONAL STATEMENT

Appellant brought suit against appellee Roy J. Norene in the United States District Court for the District of Oregon,

which Court had jurisdiction of this cause under Title 28 United States Code, Section 2241. An order of the District Court of Oregon denying the writ of habeas corpus was entered on December 12, 1955 (R-24.) Notice of Appeal was filed on December 14, 1955 (R-53). The jurisdiction of this Court to review this cause is found in 28 U. S. C. 1291.

STATEMENT OF THE CASE

Appellant is a native and citizen of the Philippine Islands, having resided there continuously from the year 1918, the date of his birth, until the year 1939. He then left Manila, P.I., as a stowaway (R-30) aboard a freighter, the SS SAGOLAND, bound for the United States of America. The vessel arrived in the United States on May 4, 1939. When the vessel docked in the United States appellant was in hiding aboard said vessel and then left the ship at night and came ashore. On December 21, 1945 at Los Angeles, California appellant signed on as a member of the crew of the SS LOUIS A. MILNE. The vessel proceeded to the Philippine Islands. On its return voyage to the United States it docked in Honolulu, T.H., on or about February 26, 1946, at which time appellant was still employed on said vessel as a member of its crew. At that time appellant was ordered detained aboard the vessel for the reason that he was not in possession of a valid passport or other document in lieu thereof. The vessel then proceeded to San Francisco, arriving there on or about March 6, 1946. Appellant having obtained a Philippine document

of identity, his detention was subsequently cancelled and he was permitted to leave the ship.

Subsequently appellant was arrested pursuant to a Warrant of Arrest duly executed on the 9th day of March, 1949, the material portions of which Warrant of Arrest are set out herein as Appendix A. A deportation hearing was duly held by the Immigration and Naturalization Service in Portland, Oregon on November 10, 1952, whereupon the Hearing Officer made findings of fact, conclusions of law and final order, the material portions of which are set forth herein as Appendix B.

At the hearing before the Immigration and Naturalization Service appellant filed with the Hearing Officer an application for suspension of deportation (Exhibit 6 of Immigration file herein). In the Hearing Officer's report under the heading "Discussion" and on Page 2 thereof, after discussing the merits of the application for suspension, he stated as follows: "Suspension of deportation will be denied as a matter of administrative discretion."

Appellant filed exceptions to the findings and conclusions of the Hearing Officer and an appeal was taken to the Board of Immigration Appeals. The Board of Immigration Appeals on the 9th day of November, 1954, ordered that appellant's exceptions, including his application for suspension of deportation, were without merit. The pertinent portions of the said order are set forth herein as Appendix C.

A Warrant of Deportation was duly made on the 7th day of February, 1955, the material portions of which are set forth herein as Appendix D.

Appellant having surrendered to Roy J. Norene, appellee herein, pursuant to said Warrant of Deportation, filed in the court below his petition herein designated "Petition for Writ of Habeas Corpus and Complaint for Injunctive Relief to Prevent Agency Action". John P. Boyd, whose name likewise appears in the title of this appeal and in the proceedings in the court below as one of the respondents, was not validly served with process in the court below and is not a party to this appeal. Upon the court below denying the petition for writ of habeas corpus this appeal was taken.

QUESTIONS PRESENTED

I.

Was a resident Filipino citizen, who was also a national of the United States, required to present an unexpired visa to permit entry into the continental United States on May 4, 1939 and on March 6, 1946?

II.

Were entries made into the United States by appellant on May 4, 1939 and March 6, 1946 within the meaning of the immigration laws?

III.

Was the Warrant of Deportation of Banez, based upon his illegal entry into the United States on May 4, 1939, valid since his arrest was originally made for improper entry in 1946?

IV.

Was the Warrant of Arrest nullified by statements of government counsel at the trial before the United States District Court?

V.

Did Section 2 of the Act of August 7, 1939, 53 Stat. (Part 2) 1230, amending Section 8 of the Act of March 24, 1934, 48 Stat. 456,462, repeal or modify subsection (a) of Section 8 of the 1934 act?

VI.

Was the hearing before the Hearing Officer unfair?

VII.

Was there an abuse of discretion by the Immigration and Naturalization Service in refusing to grant Banez a suspension of deportation?

ARGUMENT

I.

A RESIDENT FILIPINO CITIZEN, WHO WAS ALSO A NATIONAL OF THE UNITED STATES, AND WHO DESIRED TO EMIGRATE TO THE CONTINENTAL UNITED STATES ON EITHER MAY 4, 1939 OR MARCH 6, 1946, WAS REQUIRED TO PRESENT AN UNEXPIRED VISA BEFORE A VALID ENTRY COULD BE MADE.

The contention of appellant is that from the time of the passage of the Philippine Independence Act of 1934, (48 Stat. 456) and until said act became fully effective on July 4, 1946, he continued to be an American national and was therefore not subject to deportation for entry into the continental United States without a visa. It is admitted that during said period Banez was an American national; however it did not follow that he was not required to present a visa when he arrived here on May 4, 1939, nor was he exempt from the presentation of a visa upon his entry into this country on March 6, 1946. Section 8(a)(1) of the Philippine Independence Act of March 24, 1934 states in part (at 462) that:

> "For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except Section 13(c)), this section, and all other laws of the United States relating to the immigration, exclusion or expulsion of aliens, citizens of the Philippine Islands who are not

citizens of the United States, shall be considered as if they were aliens . . . ".

The 1934 act was adopted as a preliminary step in terminating American dominion of the Philippine Islands. While it did not actually deprive Filipinos of their American nationality, it demanded that they be regarded as aliens for many specified purposes under the immigration laws. *Mangaoang v. Boyd,* 205 F.2d 553 (C.A.9, 1953) Cert. denied, 346 U.S. 876; *Del Guercio v. Gabot,* 161 F.2d 559 (C.A. 9, 1947). Thus, Filipinos were required to comply with the Alien Registration Act. *Gancy v. United States,* 149 F.2d 788 (C.A.8, 1945), Cert. denied, 326 U.S. 767, rehearing denied, 326 U.S. 810. And even the prohibition of *ex post facto* clause of the Constitution does not apply to deportation of aliens. *Marcello v. Bonds,* 349 U.S. 302. The Congress has broad powers over deportation of aliens. See *Harisiodes v. Shaughnessy,* 342 U.S. 580-589. By the unmistakeable mandate of the statute they were subjected to the conditions for entry imposed by the Immigration Act of 1924, which included the need for presenting immigration visas and a specific quota limitation on entry. Though Filipinos were entitled to certain fundamental personal rights as nationals of a dependency, their rights under immigration laws of the United States were subject to Congressional control. *Gancy* v. *United States, supra.*

Section 213, U.S.C., Title 8 (Immigration), repealed by the McCarran Act June 27, 1952, c. 447, Title IV, Section 403 (a) (23), (66 Stat. 279) provided in part as follows:

> "(a) *Persons not to be admitted.*
>
> No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the issuance of the immigration visa of the accompanying parent; . . . "

In this connection see *Zacharias* v. *McGrath, Attorney General, et al.,* 105 F. Supp. 421, at 425 (D.C.. D.C.-1952):

> "Aliens who enter the United States must do so in accordance with the statutory provisions enacted by Congress found in Title 8 of the United States Code Annotated.
>
> "Congress has provided in express terms that no immigrant shall be admitted to the United States except with its permission when granted under certain conditions. 8 USCA Sec. 213 . . . ".

Continuing quoting from the same case, at page 426:

> "If an alien voluntarily leaves this country he is subject to all the provisions of the immigration law whenever he seeks to re-enter. *Lapina* v. *Williams,* 1914, 232 U.S. 78, 34 S.Ct. 196, 58 L.Ed. 515; *Lewis v. Frick,* 1914, 233 U.S. 291, 34 S.Ct.. 488, 58 L.Ed. 967; *Bendel* v. *Nagel,* 9 Cir., 1927, 17 F.2d 719."

As above stated, Filipinos, while still nationals of the United States, who owed allegiance to the United States, were for immigration purposes considered as if they were aliens, and the Philippine Islands were considered as a foreign country for immigration purposes. See *Barber v. Gonzales,* 347 U.S. 637, 642, where the Court states in part as follows:

> "It was not until the 1934 Philippine Independence Act that the Philippines could be regarded as 'foreign' for immigration purposes . . . ".

The natives of the Philippines Islands did not become "citizens" of the United States by virtue of the Treaty of Paris. (30 Stat. 1754, 1759) (*Treaty between United States and Spain April 11, 1899, Article 9.*) *Gancy* v. *U. S., supra.*

Under appellant's Point I, counsel cites the case of *Varleta* v. *Barber,* 199 F 2d 419, (C.A., 9, 1952). In this case Varleta had obtained a legal residence and was admitted to the Hawaiian Islands for permanent residence in 1931. He came to the continental United States as a stowaway in March, 1935, but was excluded from admission. He was placed aboard a steamship for deportation to the Hawaiian Islands, but escaped from the vessel on April 6, 1935, and made his way into the contintental United States where he remained except for temporary absences when he followed his pursuit as a seaman. The last entry was at Norfolk, Virginia on November 22, 1947, where he sought admission

as a resident alien seaman returning to the United States. This Court stated in part, as follows:

> "It is apparent that when the appellee, on March 22, 1935, and again on April 6, 1935, made his way into the continental United States, whether as a stowaway or otherwise, he did so in violation of the section last quoted. Under the rule commonly applied to unlawful entries into the United States by aliens generally, appellee could not have established a domicil in the continental United States or acquired a lawful permanent residence there. (Citing cases.)"

The lower court was reversed upon other grounds, namely that Varleta had qualified for entry into this country under the Philippine Trade Act (Title 22, U.S.C.A., Section 1281). Clearly, the act with which the Varleta case was concerned is not involved here since Banez did not actually reside in the United States for a continuous period of three years during the period of forty-two months ending November 30, 1941, having originally entered only on May 4, 1939; and because his entry on March 6, 1946 was not within the period from July 4, 1946 to July 3, 1951.

ARGUMENT

II.

THE DISTRICT COURT CORRECTLY CONCLUDED THAT APPELLANT ILLEGALLY ENTERED THE CONTINENTAL UNITED STATES IN 1939 AND AT NO TIME WAS HIS SUBSEQUENT PRESENCE IN THIS COUNTRY LEGAL.

Appellant came to the continental United States as a stowaway on May 4, 1939 (R-30 —stated incorrectly as May 4, 1949); and he remained in the United States until December, 1945, when he signed aboard a United States hospital ship which went to the Philippine Islands and returned to the continental United States at San Francisco on March 6, 1946. (R-30). Opposing counsel recognizes that the only questions for the Court to consider is whether or not a visa was required for Banez' entry into the United States during said period and whether or not there were in fact entries made in 1939 and again in 1946. (R-30). The matter of the requirement of a visa has been heretofore covered and the question as to what constitutes an entry will now be considered.

To the question as to what constitutes an entry there is cited for the Court's consideration the case of *United States ex rel Pellegrino* v. *Karnuth, District Director, Immigration & Naturalization Service,* 23 F. Supp. 688, 689 (D.C.W.D.-NY, 1938) where the Court stated in part as follows:

> "The word 'entry', as used in the statute, includes any coming into this country of an alien from a foreign country, whether it be a re-entry upon a permit or otherwise. (Citing cases)."

See also *Del Castillo v. Carr,* etc., 100 F.2d 338, 340 (C.A. 9, 1938); *United States ex rel Doukas* v. *Wiley, et al.,* 160 F.2d 92, 95 (C.A. 7, 1947); *Barber* v. *Varleta, supra; Volpe* v. *Smith,* 289 U. S. 422.

The subsequently enacted McCarran Act, Title 8, U.S.-C.A,. Sec. 1101 (13), defines the term "entry", which is merely a restatement of what the cases had previously held. Counsel will no doubt argue that the entry on February 22, 1946, in the Hawaiian Islands and in San Francisco on March 6, 1946, was but a continuous sequence in the original entry because Banez was on a United States vessel from the beginning to the end of his voyage, commencing in December, 1945. In this connection counsel has cited the case of *In Re Moncan,* 14 F. 44, as authority for this proposition:

> "A person on board a vessel of the United States . . . is in contemplation of law within the jurisdiction of the United States and is entitled to remain here."

In the first place in connection with the foregoing argument, Banez is deportable on the basis of either the 1939 or the 1946 entry, as will be pointed out hereafter. Secondly, the *Moncan* case was concerned solely with the Act of May 6, 1882, relating to the coming of Chinese laborers to the

United States. Third, there clearly has been an "entry" into the United States within the meaning of the immigration laws when there has been an arrival from a foreign port or place. *U. S. ex rel Stapf* v. *Corsi,* 287 U.S. 129; *U. S. ex rel Claussen v. Day,* 279 U.S. 398. Fourth, the Philippine Islands were "foreign" for immigration purposes at the time here in question *Barber v. Gonzales, supra.* Fifth, a seaman has made an "entry" following return from a round-trip voyage to a foreign port or place, even though he did not go ashore or the vessel was of United States' registry. *U. S. ex rel Roovers v. Kessler,* 90 F.2d 327 (C.A. 5, 1937) *U. S. ex rel Trompetto* v. *Corsi,* 61 F. 2d 856 (C.A. 2, 1932); *U. S. ex rel Stapf* v. *Corsi, supra;* and *U. S. ex rel Claussen* v. *Day, supra.*

ARGUMENT

III.

THE DISTRICT COURT CORRECTLY CONCLUDED THAT APPELLANT WAS DEPORTABLE UNDER THE WARRANT OF DEPORTATION BASED UPON HIS ILLEGAL ENTRY INTO THE UNITED STATES ON MAY 4, 1939.

Although Banez originally was arrested on an improper entry in 1946, it was not unlawful to order his deportation for an irregular entry in 1939, upon the basis of evidence developed at the hearing, provided the hearing was fairly conducted. As to the appellant being fully informed of the charges made against him, the District Judge below in his

opinion dated December 7, 1955, commented in part as follows:

> "Petitioner was at all times aware of the nature of the charges made against him, and the findings of the examiner, made November 24, 1952, were amply supported by the evidence and referred to both entries."

It is well settled that irregularities in a Warrant of Arrest if any, or in other preliminaries do not invalidate the proceedings, if valid grounds for deportation were properly established before the final expulsion order was made. *Bilokumsky* v. *Tod,* 263 U. S. 149 (1923). It has been common practice for many years to revise or supplement the charges mentioned in the Warrant of Arrest. An order of deportation resting on such amended charges is unassailable, provided the appellant was given adequate notice of such charges and opportunity to refute them. *Catalano* v. *Shaughnessy,* 197 F.2d 65 (C.A., 2, 1952) *Tadano* v. *Manney,* 160 F.2d 665 (C.A. 9, 1947). On the question of appellant's deportability the hearing officer merely applied the statute to undisputed facts. *Marcello* v. *Bonds, supra.* The facts were freely and voluntarily admitted by appellant and his counsel at the hearing. The issues were clearly understood at the hearing before the examiner and before the court below.

ARGUMENT

IV.

THE WARRANT OF ARREST WAS NOT INVALIDATED BY ANY STATEMENT OF GOVERNMENT COUNSEL AT THE HEARING OF THIS CAUSE BEFORE THE DISTRICT COURT BELOW.

The District Judge was correct in determining that the Warrant of Arrest was "broad enough to include his original entry in 1939"; that the findings of the examiner were supported by the warrant and referred to both entries; that the examiner's findings that Banez is deportable on the basis of either entry was affirmed by the Board of Immigration Appeals; and that the Warrant of Deportation being based on the 1939 entry created no variance between the original Warrant of Arrest and the Warrant of Deportation.

Clearly, Banez was deportable on either his 1939 or 1946 entry. The Warrant of Deportation is broad enough to embrace either entry and while, at the hearing government counsel, in answer to the court's question, ventured his opinion that the 1946 entry was not involved, and it was not intended to waive any material grounds for deportation that were available to the government.

ARGUMENT

V.

SECTION 8(a) OF THE ACT OF MARCH 24, 1934, 48 STAT. 462, WAS NOT REPEALED OR MODIFIED BY SECTION 2 OF THE ACT OF AUGUST 7, 1939, 53 STAT. (PART 2) 1230.

Section 2 of the Act of August 7, 1939, 53 Stat. (Part 2) 1230, amended Section 8 of the Act of March 24, 1934, 48 Stat. 462, by adding the following new subdivision:

> "(d) Pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands, except as otherwise provided by this Act, citizens and corporations of the Philippine Islands shall enjoy in the United States and all places subject to its jurisdiction all of the rights and privileges which they respectively shall have enjoyed therein under the laws of the United States in force at the time of the inauguration of the Government of the Commonwealth of the Philippine Islands."

The 1939 act has no relevance for a number of reasons. First, it became effective after appellant's entry in 1939 and therefore did not, under its terms or intention, correct the impropriety of the previous entry. Second, it does not purport to repeal or modify subsection (a) of Section 8, which imposed the applicable requirements for compliance with the immigration laws. Thus, the privileges which Philippine citizens were to enjoy under its terms obviously did not include

subsection (a)'s requirement that a visa was to be presented by Filipinos seeking entry from a foreign country. It will be further noted that the 1939 act added a new subdivision designated as sub-paragraph (d). On page 7 of appellant's brief, undoubtedly through inadvertance in quoting the above section, counsel designated it as paragraph (a), whereas reference to the statute will show that Congress designated it as (d). It is obviously clear therefore that the 1939 act was to follow the sub-paragraphs (a), (b) and (c), all under section 8 of the Act of March 24, 1934.

Further in this connection it is our view that the Philippine Independence Act of 1934 was a formal Congressional expression of the firm purpose of the people of the United States, held from the Cession of the Philippine Islands through this country by Spain, to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government could be established therein. Unmistakably, in enacting that legislation, Congress was mindful of the anomalous status of natives and citizens of the Philippine Islands pending that nation becoming completely independent. Obviously Section 8(a)(1) of that act was intended by Congress to be a clarification of this peculiar situation.

ARGUMENT

VI.

THE HEARING BEFORE THE IMMIGRATION HEARING OFFICER ON NOVEMBER 10, 1952 WAS NOT UNFAIR.

Under certain circumstances a hearing may be adjudged to be unfair if witnesses' statements are introduced into the record that are detrimental to appellant's defense and when said witnesses are available but are not called by the government to testify in person and be subject to cross-examination.

On page 16 of the report of the immigration hearing of November 10, 1952, appellant's counsel objected to the introduction of Exhibit 14, which objection was based on the fact that the witnesses whose statements were narrated in the report of Investigator Peter Szambelan, were not present at the hearing and subject to cross examination. On the same page of the report counsel stated "I object for the record only". As pointed out in said report by the hearing officer, the witnesses' statements as narrated embodied only favorable comment regarding petitioner-appellant and therefore no reason existed for cross-examination of said witnesses. Counsel's only apparent objection was that one of the witnesses interrogated by the investigator was presumably a communist and therefore his statements could not be relied upon, and that in a case of another person interrogated it became apparant evidently that the witness was mistaken

as to some dates and as to whether or not he had been properly sworn before a notary public in the execution of some statement. The record is devoid of any showing that the statement made by the investigating officer which narrated the interview with the two witnesses was ever considered by the hearing officer. Further it appears very clear that failure to produce these two persons for cross-examination was entirely harmless. At the hearing the evidence upon which the findings by the hearing officer was based was voluntarily and freely furnished by appellant or by admissions made by his counsel. The hearing officer was not required to go beyond these admissions for reasonable, substantial and probative evidence to support his findings and to support the resultant warrant eventually issued.

An alien, in deportation proceedings, must be afforded due process of law, including a fair hearing. *Navarrette-Navarrette v. Landon,* 223 F.2d 234, 237 (C.A. 9, 1955). A reading of the report of the hearing held before the hearing officer on November 10, 1952 will clearly demonstrate that appellant was afforded a fair and impartial hearing and in accordance with due process of law.

ARGUMENT

VII.

THE REFUSAL OF THE IMMIGRATION AND NATURALIZATION SERVICE TO GRANT BANEZ A SUSPENSION OF DEPORTATION WAS NOT AN ABUSE OF DISCRETION.

The last and final issue presented by appellant in this case relates to the question of discretionary relief. The hearing officer has denied such relief as a matter of administrative discretion, but counsel contends that said hearing officer was arbitrary and abused his discretion and contends that the factors presented by this case are essentially such as to merit for the respondent a suspension of deportation under the provisions of Section 19, (c) (2) (b) of the Immigration Act of 1917, as amended.

The hearing officer in his report pointed out that the appellant having resided in the United States in excess of seven years was eligible for suspension of deportation. While the record appears to show that this appellant was law abiding, was industrious and had other favorable characteristics, there was no showing made on his behalf that would entitle him to preferential treatment over other good people desiring to come to the United States.

The law is abundantly clear that the exercise of discretion as exercised by the Immigration and Naturalization Service

will not be reviewed by the courts, *U. S. ex rel Adel* v. *Shaughnessy,* 183 F.2d 371 (2nd Cir. 1950,) or a failure to exercise discretion. *U.S. ex rel Kaloudis* v. *Shaughnessy,* 180 F.2d 489, (2d Cir. 1950); *U.S. ex rel Weddeke* v. *Watkins,* 166 F.2d 369, 373, (2d Cir., 1948), Cert. den. 333 U.S. 876; and it was not for the courts on pass on the factors relied on by the hearing officer or the Board of Immigration Appeals in reaching their decision. *Marcello* v. *Bonds, supra.*

The record in this case does not substantiate either a clear abuse of discretion or a failure to exercise discretion. Counsel does not cite a single case in support of his claim that the hearing officer abused his discretion for failure to suspend deportation of appellant and we submit that legally and factually this exception is without merit.

* * * *

Cases referred to by counsel are not in point. They fall generally into categories where entries were made prior to the Philippine Independence Act; cases where persons against whom deportation proceedings were instituted had made prior, valid entries into the U. S.; cases where hearings were determined to be unfair, where material witnesses were available and not called to testify at the hearings although requested to do so, in which cases detrimental statements were put into evidence over objection; and cases where

statements were introduced, over objection, containing hearsay on hearsay and based on confidential information related to the Immigration Officer not disclosed to the appellant.

CONCLUSION

The decision of the District Court is correct and should be affirmed by this Court.

Respectfully submitted,

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VICTOR E. HARR,
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Attorneys for Appellee,
Roy J. Norene

APPENDIX A

WARRANT
FOR ARREST OF ALIEN

UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
Seattle, Washington

No. 1209-5446

To OFFICER IN CHARGE, IMMIGRATION AND NATURALIZATION SERVICE, Portland, Oregon

Or to any Immigrant Inspector in the service of the United States.

WHEREAS, from evidence submitted to me, it appears that the alien

ROQUE MADRONA BANEZ, alias R. MONTING who entered this country at Honolulu, Hawaii, on about the 12th day of February, 1946, has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit: The Immigration Act of May 26, 1924, in that, at the time of entry, he was an immigrant not in possession of a valid immigration visa and not exempted from the presentation thereof by said Act or regulations made thereunder; and and The Passport Act approved May 22, 1918, as amended, and the Act of Feb. 5, 1917, in that, at the time of entry, he did not present an unexpired passport or official document in the nature of a passport issued by the government of the

country to which he owes allegiance or other travel document showing his origin and identity, as required by Executive Order in effect at time of entry.

APPENDIX B

FINDINGS OF FACT: Upon the basis of all the evidence presented, it is found:

(1) That the respondent is an alien, a native and citizen of the Philippine Islands;

(2) That the respondent last entered the United States at Honolulu, T. H., on February 22, 1946, on the American S. S. "Louis A. Milne";

(3) That the respondent at the time of such arrival was returning to an unlawful residence in the United States which originated on May 4, 1939, on which date he arrived as a stowaway;

(4) That the respondent at the time of his last entry was not in possession of a valid immigration visa;

(5) That the respondent at the time of his last arrival was not in possession of a valid passport or other travel document in lieu thereof but shortly thereafter obtained a certificate of identity and was permitted to leave the vessel on which he arrived.

CONCLUSIONS OF LAW: Upon the basis of the foregoing findings of fact, it is concluded:

(1) That under Sections 13 and 14 of the Immigration Act of May 26, 1924, the respondent is subject to deportation on the ground that at the time of his

last entry he was not in possession of a valid immigration visa and not exempted from the presentation thereof by said Act or regulations made thereunder;

(2) That under Section 19(a) of the Immigration Act of February 5, 1917, as amended, the respondent IS NOT subject to deportation on the ground that at the time of his last entry he entered in violation of the Passport Act approved May 22, 1918, in that he did not present an unexpired passport or official document in the nature of a passport issued by the government of the country to which he owes allegiance or other travel document showing his origin and identity, as required by Executive Order in effect at time of such entry.

ORDER; It is ordered that the respondent be deported from the United States pursuant to law on the following charge:

The Immigration Act of May 26, 1924, in that, at the time of entry, he was an immigrant not in possession of a valid immigration visa and not exempted from the presentation thereof by said Act or regulations made thereunder.

APPENDIX C

ORDER: It is ordered that the outstanding order of deportation be withdrawn and the alien be permitted to depart from the United States voluntarily without expense to the government, to any country of his choice, within such period of time, in any event not less than 30 days, and under such conditions as the officer-in-charge of the District deems appropriate, conditioned upon consent of surety, if any.

APPENDIX D

UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

WARRANT OF DEPORTATION

TO: CHIEF, DETENTION, DEPORTATION AND PAROLE SECTION, IMMIGRATION AND NATURALIZATION SERVICE, Seattle, Washington

Or to any Officer or Employee of the United States Immigration and Naturalization Service.

WHEREAS, after due hearing before an authorized officer of the United States Immigration and Naturalization Service, and upon the basis thereof, an order has been duly made that the alien ROQUE MADRONA BANEZ alias R. MONTING who entered the United States at Portland, Oregon on the 4th day of May, 1939, is subject to deportation under the following provisions of the laws of the United States, to wit: The Immigration Act of May 26, 1924, in that at the time of entry, he was an immigrant not in possession of a valid immigration visa and not exempted from the presentation thereof by said Act or regulations made thereunder.